

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KELLY BERTLOW TANTAU,

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No. 1:19-cv-01793-HBK

OPINION AND ORDER¹

(Doc. No. 1)

This cause is before the undersigned on Plaintiff's appeal of an administrative decision denying her August 9, 2016 application for a Period of Disability and Disability Insurance Benefits. (Doc. No. 1). The Administrative Law Judge ("ALJ") found that Plaintiff was not under a disability, as defined in the Social Security Act, from the alleged disability onset date of December 20, 2015, through January 30, 2019, the date of the ALJ's decision. (AR 15-31). Plaintiff has exhausted her available administrative remedies and the case is properly before the Court. The undersigned has reviewed the record, the memoranda, and the applicable law. For the reasons stated herein, the undersigned orders that the Commissioner's decision be affirmed.

I. ISSUES ON APPEAL

Plaintiff raises two issues on appeal:

¹ Both parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. § 636(c)(1) and Local Rule 302(c)(15).

1 1. The ALJ erred by rejecting the opinion from treating physician Dr. Salvatierra, without
2 specific, legitimate reasons supported by the record.

3 2. The ALJ erred by rejecting the opinion from Dr. Meyer, the consultative psychological
4 examiner, without specific, legitimate reasons.

5 (Doc. No. 20 at 3).

6 II. STANDARD OF REVIEW

7 This Court reviews the Commissioner's final decision under the substantial evidence
8 standard; the decision will be disturbed only if it is not supported by substantial evidence or is
9 based on legal error. *See* 42 U.S.C. § 405(g) ("findings of the Commissioner of Social Security
10 as to any fact, if supported by substantial evidence, shall be conclusive"); *Smolen v. Chater*, 80
11 F.3d 1273, 1279 (9th Cir. 1996); *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
12 "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to
13 support a conclusion." *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005). "'Substantial
14 evidence' means 'more than a scintilla,' but 'less than a preponderance.'" *Smolen*, 80 F.3d at
15 1279 (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971) and *Sorenson v. Weinberger*, 514
16 F.2d 1112, 1119 n.10 (9th Cir. 1975)) (internal citations omitted). "The court will uphold the
17 ALJ's conclusion when the evidence is susceptible to more than one rational interpretation."
18 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). But the court must "consider the
19 record as a whole, weighing both evidence that supports and evidence that detracts from the
20 Secretary's conclusion." *Tackett*, 180 F.3d at 1098 (citations omitted). The court "may only
21 consider the reasons provided by the ALJ in the disability determination and 'may not affirm the
22 ALJ on a ground upon which he did not rely.'" *Luther v. Berryhill*, 891 F. 3d 872, 875 (9th Cir.
23 2018) (quoting *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014)). "[T]he court will not
24 reverse an ALJ's decision for harmless error, which exists when it is clear from the record that the
25 ALJ's error was inconsequential to the ultimate nondisability determination." *Tommasetti*, 533
26 F.2d at 1038.

27 III. THE ALJ'S DECISION

28 At step one of the sequential evaluation process, the ALJ found that Plaintiff had not

1 engaged in substantial gainful activity since December 20, 2015, the alleged date of disability
2 onset. (AR 17.). Although Plaintiff did work part-time for a few months in 2016 and 2018, the
3 ALJ found this work to be an “unsuccessful work attempt,” and that the work did not constitute
4 substantial gainful activity. (*Id.* at 17-18). At step two, the ALJ found that Plaintiff has the
5 following severe impairments: “generalized anxiety disorder with panic attacks, status post right
6 labral repair, left hip chondral separation, lumbar spine degenerative disc disease, obstructive
7 sleep apnea, and insomnia.” (*Id.* at 18); 20 CFR 404.1520(c).

8 However, the ALJ found that Plaintiff does not have an impairment or combination of
9 impairments that are sufficiently severe to limit her ability to work. (AR 18-19). More
10 particularly, at step three, the ALJ found that Plaintiff’s “medically determinable impairments,
11 considered singly and in combination, do not meet or medically equal the criteria of any medical
12 listing, including those found under listing 1.02 and 1.04.” (*Id.* at 19).

13 At step four, regarding Plaintiff’s residual functional capacity, the ALJ found that
14 Plaintiff:

15
16 has the residual functional capacity to perform light work as
17 defined in 20 CFR 404.1567(b) except with the following specific
18 limitations; frequently lift and carry 10 pounds, occasionally lift
19 and carry 20 pounds; sit for up to 6 hours, stand and walk 6 hours in
20 an 8-hour workday with normal breaks; never climb ladders, ropes,
21 or scaffolds; occasionally climb ramps and stairs; occasionally
22 stoop, kneel, balance, crouch, and crawl; operation of a motor
vehicle may be performed frequently; able to perform simple,
routine, tasks, involving no more than simple work-related
decisions, with no more than rare contact (no more than 5% of the
workday) with the general public, and work limited to no fast-paced
production requirements, persistence, and pace; and off-task less
than 10% of the time in an 8-hour workday.

23 (*Id.* at 22-28). In light of Plaintiff’s residual functional capacity, the ALJ found that Plaintiff does
24 not have the ability to perform any past relevant work—namely working as a dental assistant.
25 (*Id.* at 28-29).

26 At step five, the ALJ found that, in consideration of Plaintiff’s “age, education, work
27 experience, and residual functional capacity, there are jobs that exist in significant numbers in the
28 national economy that the [Plaintiff] can perform,” such as an office helper, assembler, or

1 housekeeper. (*Id.* at 29).

2 IV. ANALYSIS

3 A. Weight Given to Dr. Salvatierra's Opinion

4 Plaintiff contends that the ALJ erred by rejecting the opinion from treating physician Dr.
5 Salvatierra, without specific, legitimate reasons supported by the record. (Doc. No. 20 at 13-15).
6 As more addressed *infra*, the Court rejects this argument.

7 The Ninth Circuit employs a hierarchy to medical opinions affording weight to medical
8 opinions by whether they are proffered by treating, examining, or non-examining professionals.
9 *Holohan v. Massanari*, 246 F.3d 1195, 1201-1202 (9th Cir. 2001); *Lester v. Chater*, 81 F.3d 821,
10 830 (9th Cir. 1995). In general, an ALJ gives more weight to the medical opinion of a source
11 who has examined the claimant than to the medical opinion of a source who has not examined the
12 claimant, 20 C.F.R. § 404.1527(c)(1), and generally, more weight is given to medical opinions
13 from a treating physician, *id.* § 404.1527(c)(2). *See also Garrison v. Colvin*, 759 F.3d 995, 1012
14 (9th Cir. 2014). The Court “afford[s] greater weight to a treating physician’s opinion because ‘he
15 is employed to cure and has a greater opportunity to know and observe the patient as an
16 individual.’” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (quoting *Sprague v.*
17 *Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987)). “If a treating physician’s opinion is ‘well-
18 supported by medically acceptable clinical and laboratory diagnostic techniques and is not
19 inconsistent with the other substantial evidence in the case record, [it will be given] controlling
20 weight.’” *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007) (citing § 404.1527(c)(2)). “[T]he
21 more consistent a medical opinion is with the record as a whole, the more weight [is given] to that
22 medical opinion.” § 404.1527(c)(4).

23 However, where the treating physician’s opinion is contradicted by another doctor, the
24 ALJ may reject this opinion as long as the ALJ makes “findings setting forth specific, legitimate
25 reasons for doing so that are based on substantial evidence in the record.” *Murray v. Heckler*,
26 722 F.2d 499, 502 (9th Cir. 1983); *Garrison*, 759 F.3d at 1012 (“Where an ALJ does not . . . set
27 forth specific, legitimate reasons for crediting one medical opinion over another, he errs.”). “An
28 ALJ can meet this burden by setting out a detailed and thorough summary of the facts and

1 conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Cotton v.*
2 *Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986). Moreover, the Court reviews “only the reasons
3 provided by the ALJ in the disability determination and may not affirm the ALJ on a ground upon
4 which he did not rely.” *Orn*, 495 F.3d at 630; *see also Luther v. Berryhill*, 891 F.3d 872, 875 (9th
5 Cir. 2018).

6 The Court finds that the ALJ set forth specific, credible reasons for crediting one medical
7 opinion over another. The ALJ considered and summarized the findings of the various medical
8 doctors, finding that Dr. Salvatierra’s opinion was contradicted by other evidence in the record.
9 As summarized by the ALJ, Dr. Salvatierra found Plaintiff: “had significant physical limitations,
10 including lifting and carrying no more than five pounds, sitting one hour in an eight-hour
11 workday, standing and walking one hour in an eight-hour workday, and the need to lie down
12 and/or recline about two hours during an eight-hour workday.” (AR 27). The ALJ “assigned
13 little weight” to Dr. Salvatierra’s opinion “because it is simply not supported by the greater
14 weight of the evidence. Although the [Plaintiff] has had hip pain, she had surgery, which
15 resolved the symptoms to the point where the [Plaintiff] can do more than that which is reflected
16 in the opinion. Further, the opinion is inconsistent with the lack of significant abnormality of the
17 spine and extremities on physical examination.” (*Id.*).

18 The ALJ instead gave “great weight” to the state agency medical consultants’ opinions.
19 (AR 26). The ALJ summarized the state agency medical consultants’ opinions and made the
20 following findings:

21 the opinions found that the [Plaintiff] was limited to a reduced range
22 of light work with occasional performance of postural activities. The
23 undersigned gives great weight because the opinions are based on a
24 review of the case record that includes medical reports about the
25 claimant’s particular impairments. In addition, the State agency
26 medical consultants have an understanding of Social Security
27 disability programs and their evidentiary requirements. Further, the
28 evidence shows abnormal findings on imaging studies of the bilateral
hips and lower back that support the claimant likely has hip and low
back pain, but normal gait, strength, reflexes, and sensation on
physical examination.

(*Id.* at 26-27).

1 As for the opinion of Dr. Wagner, the internal medicine consultative examiner, the ALJ
2 assigned partial weight. (*Id.* at 27). Specifically, the ALJ found the following about Dr.
3 Wagner's opinion:

4 [The] opinion essentially found the claimant could perform a range
5 of medium work with frequent climbing of ramps and stairs,
6 occasional climbing of ladders and scaffolds, and frequent operation
7 of a motor vehicle. Although the consultative examiner's opinion is
8 based on an actual examination of the claimant, the opinion did not
9 give adequate consideration to the claimant's pain. The above
10 residual functional capacity generously considers the claimant's
11 subjective complaints of pain. Accordingly, the undersigned assigns
12 partial weight to the opinion.

13 (*Id.*).

14 The Court finds the ALJ's opinion to give Dr. Salvatierra's opinion little weight, properly
15 set forth "specific, legitimate reasons for doing so that are based on substantial evidence in the
16 record." *Murray*, 722 F.2d at 502. Dr. Salvatierra's opined that Plaintiff had significant physical
17 limitations, including significant limitations on lifting, sitting, standing, and the need to recline
18 for two hours during an eight-hour workday. (AR 554-57). The ALJ determined that Dr.
19 Salvatierra's opinion was contradicted by the state agency and Dr. Wagner's opinions. The state
20 agency found that Plaintiff could perform light work and Wagner found that Plaintiff was capable
21 of medium work, whereas Dr. Salvatierra found that Plaintiff had significant barriers to work,
22 including only being able to walk, stand, or sit for one hour at a time in a workday. In light of
23 these contrary conclusions, the ALJ could reasonably place less weight on Dr. Salvatierra's
24 opinion. *See Andrews v. Shalala*, 53 F.3d 1035, 1039-40 (9th Cir.1995) (explaining that the ALJ
25 is the final arbiter with respect to resolving ambiguities in the medical evidence).

26 Further, the ALJ pointed to evidence in the record that Plaintiff's treatment had improved
27 her condition, noting that "the record . . . reveals that the treatment has been generally successful
28 in controlling those symptoms. For example, the [Plaintiff] underwent surgery of the right hip
and reported overall improvement in pain following surgery. . . . Thus, the various forms of
treatment have generally been successful in controlling the [Plaintiff's] symptoms." (*Id.* at 23).
The ALJ also pointed to evidence in the record that demonstrated Plaintiff's physical condition
was much improved by April 2018, noting that Plaintiff had a "normal gait and station, ability to

1 walk on toes and heels, negative Romberg, normal range of motion of the lumbar spine, negative
 2 straight leg raise in the seated and supine positions, normal range of motion of the hips despite
 3 mild discomfort of the hips at the extremes, normal strength, normal sensation, and normal
 4 reflexes.” (*Id.* at 25). “[T]he repeated findings of normal muscle strength, normal sensation,
 5 normal reflexes, and normal gait support that the claimant is capable of a range of work at the
 6 light exertional level.” (*Id.*).

7 The Court finds that the ALJ articulated specific legitimate reasons supported by
 8 substantial evidence for assigning little weight to Dr. Salvatierra’s opinion. The Court finds no
 9 error in the ALJ’s consideration of the opinion of Dr. Salvatierra.

10 **B. Weight given to Dr. Meyer’s Opinion**

11 Plaintiff contends that the ALJ erred when he gave partial weight to the opinion of Dr.
 12 Meyer, a psychological consultative examining doctor, without setting forth specific, legitimate
 13 reasons for doing so. (Doc. No. 20 at 15-18). The Court rejects Plaintiff’s contention.

14 As with treating doctors, “the opinion of an examining doctor, even if contradicted by
 15 another doctor, can only be rejected for specific and legitimate reasons that are supported by
 16 substantial evidence in the record.” *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995) (citing
 17 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)). The ALJ, in setting forth specific and
 18 legitimate reasons, should set out “a detailed and thorough summary of the facts and conflicting
 19 clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157
 20 F. 3d 715, 725 (9th Cir. 1998). “Substantial evidence means more than a mere scintilla, but less
 21 than a preponderance.” *Andrews*, 53 F.3d at 1039.

22 The ALJ gave partial weight to Dr. Meyer’s opinion. Dr. Meyer “found the [Plaintiff] had
 23 mostly moderate to marked limitations, including marked limitations performing work activities
 24 on a consistent basis, adapting to changes in the workplace environment, and performing work
 25 activities without special or additional supervision.” (AR 28). The ALJ found that the limitations
 26 outlined by Dr. Meyer:

27 do not make sense in light of the claimant’s testimony, the record,
 28 and the claimant’s work ability. For instance, the claimant testified
 she has worked as a dental assistant for several months since the

1 alleged onset date, which does not support the opinion that the
2 claimant would require special or additional supervision performing
3 work activities. Moreover, this opinion also found the claimant was
4 not capable of managing funds due to memory issues, but this is
5 inconsistent with the claimant's own report that she can pay bills and
6 handle finances.

7 (*Id.*).

8 The Court finds that the ALJ, in giving partial weight to Dr. Meyer's opinion, provided
9 specific and legitimate reasons for doing so that are supported by substantial evidence in the
10 record. Dr. Meyer found that Plaintiff may be "easily overwhelmed and distracted due to anxiety
11 and panic attacks" and that her "mental health symptoms are . . . likely to impact her regular
12 attendance in a 40-hour work week and her ability to tolerate stressful work environments." (*Id.*
13 at 483). Dr. Meyer found that Plaintiff's abilities ranged from mildly to moderately limited. (*Id.*
14 at 484-85). For example, Dr. Meyer found that Plaintiff's ability to maintain work attendance, to
15 work a normal workday or workweek, to accept instructions from supervisors, interact with co-
16 workers and the public, and deal with usual work stresses were moderately limited. (*Id.*). Dr.
17 Meyer found that Plaintiff has marked memory deficits which would require Plaintiff to be given
18 step-by-step instructions and may require supervision for safety-related tasks. (*Id.* at 484). Dr.
19 Meyer found that Plaintiff's ability to understand, remember, and perform simple written and oral
20 instructions was mildly limited, while Plaintiff's ability to understand, remember, and perform
21 complex instructions was markedly limited. (*Id.*).

22 The ALJ found Dr. Meyer's opinion contradicted Plaintiff's own testimony that she was
23 able to work for two days a week as a dental assistant. Plaintiff testified that she worked as a
24 dental assistant since 1994, and had worked in this position, albeit with accommodations, for
25 several months after the alleged onset date of her disability. (*Id.* at 17-18). Further, the ALJ
26 noted that Plaintiff stated that she was able manage her finances, in contradiction to Dr. Meyer's
27 opinion. (*Id.* at 23). Plaintiff specifically stated that she is capable of paying bills, counting
28 change, and handling a savings account. (*Id.* at 231). The ALJ found Plaintiff's own statements
29 were in direct contradiction to Dr. Meyer's statement that Plaintiff is "not capable of managing
30 funds due to memory issues" and that "a payee would be required" to manage funds. (*Id.* at 485).
31 Finally, in various parts of the record, Plaintiff reported that she engaged in various forms of

1 housework, driving, exercising, and physical therapy. (*Id.* at 23).

2 The Court finds that the ALJ articulated specific legitimate reasons supported by
3 substantial evidence for assigning partial weight to Dr. Meyer's opinion. The ALJ could
4 reasonably conclude portions of Dr. Meyer's opinion were in conflict and contradicted by
5 Plaintiff's statements. The Court finds no error in the ALJ's consideration of the opinion of Dr.
6 Meyer's.

7 **V. Conclusion**

8 The Court does not make independent factual determinations, re-weigh the evidence or
9 substitute its decision for that of the ALJ. Thus, the question is not whether the Court would have
10 arrived at the same decision on *de novo* review; rather, the Court's review is limited to
11 determining whether the ALJ's findings are based on correct legal standards and are supported by
12 substantial evidence. Applying this standard of review, the Commissioner's decision is due to be
13 affirmed.

14 Accordingly, it is **ORDERED**:

15 1. The decision of the Commissioner of Social Security is AFFIRMED for the reasons set
16 forth above.

17 2. The Clerk of Court is directed to enter judgment in favor of the Commissioner of
18 Social Security and terminate any pending motions/deadlines and close this case.

19
20 Dated: September 28, 2021

21 
22 HELENA M. BARCH-KUCHTA
23 UNITED STATES MAGISTRATE JUDGE
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